

**Before the
Federal Communications Commission
Washington, D.C. 20554**

FCC MAIL ROOM

JUL 10 4 57 PM '94

MM Docket No. 93-89

In re Applications of

AURIO A. MATOS File No. BPH-911114MS

LLOYD File No. BPH-911115MP
SANTIAGO-SANTOS AND
LOURDES RODRIGUEZ BONET

For Construction Permit for a
New FM Station on Channel 293A
in Culebra, Puerto Rico

ORDER

Adopted: June 24, 1994;

Released: July 7, 1994

By the Review Board: MARINO (Chairman) and
Greene.

1. The Review Board has before it for consideration a Joint Request for Approval of Settlement Agreement filed March 8, 1994, by the above-captioned applicants. The Commission's Mass Media Bureau submitted comments opposing the Agreement on April 28, 1994, and the applicants filed reply comments on May 9, 1994.

2. In an *Initial Decision*, 8 FCC Rcd 7920 (1993), Administrative Law Judge Joseph P. Gonzalez granted the application of Aurio A. Matos (Matos) for authority to construct a new FM station at Culebra, Puerto Rico, and denied the mutually exclusive application of Lloyd Santiago-Santos and Lourdes Rodriguez Bonet (Santos-Bonet). The parties filed exceptions and replies. In a January 28, 1994 statement for the record, Matos reported that the United States Fish and Wildlife Service had recently informed him that it would not grant the Special Use Permit necessary for the effectuation of his site proposal. Also on that date, the Bureau filed a motion to reopen the record and to enlarge the issues to determine whether Matos timely reported the loss of his transmitter site and whether he has reasonable assurance of the availability of the site. Matos opposed the motion on February 7, 1994, and has since petitioned for leave to amend to a new site. See Matos Petitions for Leave to Amend, filed February 7, April 14, May 5, and May 23, 1994.¹

3. The settlement agreement contemplates the grant of the Matos application, as amended, and the dismissal of the Santos-Bonet application and is conditioned on the denial

of the Bureau's motion to reopen and enlarge. In return, the following consideration is offered: Matos will pay Santos-Bonet \$50,000, which amount is alleged to be less than its legitimate and prudent expenses of \$50,716.98. See Settlement Agreement, Exh. A. In addition, the parties have agreed to execute consulting agreements worth an additional \$50,000 whereunder Matos will hire Lloyd Santiago-Santos and Lourdes Rodriguez Bonet "as part-time consultants to assist in the construction and initial operation of the new Culebra station." *Id.* at 2. Movants propose that Mr. Santiago-Santos, who has broadcast management experience, will serve as operations consultant while Ms. Bonet, who possesses a background in business and accounting, will be a business and financial consultant. Each consulting agreement will be for a two-year term with annual compensation of \$12,500. Matos will place \$25,000 in escrow for each year of the contract. See *id.* ¶ 6.

4. Upon reviewing additional supporting documentation provided by the applicants, which materials are not in the record nor before the Board, the Bureau opines that "the settlement agreement is not grantable in its present form." Bureau Comments at 3. In addition to maintaining that the record should be reopened to try qualifying issues against Matos,² the Bureau objects to that portion of the settlement agreement relating to the hiring of Santiago-Santos and Bonet as consultants -- apparently because the agreements are still in draft form (*id.* at 4):

in the absence of any binding [consulting and escrow] agreements, the Board is unable to conclude that the proposed consulting arrangement -- through which Santiago & Rodriguez would reap an additional \$50,000 over and above their legitimate and prudent expenses -- is not a sham designed to skirt the Commission's limitation on reimbursable expenses.

5. In reply, Movants describe their informal dealings with Bureau counsel, including their provision of drafts of the agreements for its review, and their efforts to obtain its advice on the agreements in advance of their execution. Reply Comments at 3-4. Matos and Santos-Bonet claim they are "fully prepared" to execute the agreements as drafted, but state their continuing preference to hear first from the Bureau "in an effort to expedite the resolution of this proceeding." *Id.* at 5. Finally, they state (*id.* at 5-6):

If the Bureau elects not to comment on the substance of the Agreements, and the Review Board decides that these Agreements must be filed in order for the Board to rule of [sic] the Settlement Agreement, then the Applicants will execute the Agreements without the prior approval of the Bureau.

6. We agree with the Bureau insofar as it argues that Movants have failed to place a grantable settlement agreement before the Board. The settling parties are responsible for filing all necessary documentation to support their settlement agreement and to demonstrate that their pro-

¹ Although the Bureau has found Matos' new site proposal to be technically acceptable, it maintains that Matos lacks good cause to amend to a new site. Bureau Comments, filed Feb. 15 & June 2, 1994.

² The Bureau, which filed its comments on the settlement

agreement while Matos was still in the process of finalizing his new site proposal (and securing the approval of the Federal Aviation Administration), further objects to the settlement agreement on the theory that Matos lacks a viable transmitter site. Bureau Comments at 3-4.

posal complies with the Commission's rules and policies. They cannot avoid this responsibility by relying on Bureau counsel, or any other entity, to ensure that their proposal meets the threshold requirements. Matos and Santos-Bonet will accordingly be ordered to submit all documents supporting their proposed settlement agreement and required by the Commission's rules, specifically including the final consulting agreements and the escrow agreement referenced in the settlement agreement. The Bureau may submit comments on that filing.

7. ACCORDINGLY, IT IS ORDERED, That Aurio A. Matos and Lloyd Santiago-Santos and Lourdes Rodriguez Bonet ARE DIRECTED TO FILE supporting documentation in accordance with paragraph 6 of this *Order* within fifteen (15) days of its release date; and that the Mass Media Bureau MAY FILE responsive comments within ten (10) days thereafter.

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board